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No. 02-1672

IN THE

Supreme Court of the United States

RODERICK JACKSON,

Petitioner,

v.

BIRMINGHAM BOARD OF EDUCATION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF *AMICUS CURIAE* LEADERSHIP CONFERENCE ON CIVIL RIGHTS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*

The Leadership Conference on Civil Rights ("LCCR") is a coalition of more than 180 national organizations committed to the protection of civil and human rights in the United States.[1] Founded in 1950, it is the nation's oldest, largest, and most diverse civil and human rights coalition. Its member organizations, including *inter alia*, the American Civil Liberties Union, the AFL-CIO, the Lawyers' Committee for Civil Rights Under Law, the Mexican American Legal Defense and Educational Fund, the National Association for the Advancement of Colored People, the American Federation of Teachers, the Union of American Hebrew Congregations, the NAACP Legal Defense and Educational Fund, Inc., and the Disability Rights Education and Defense Fund, Inc., represent men and women of all races and ethnicities.[2]

The LCCR promotes effective civil rights legislation and policy, as well as the strong enforcement of extant statutory and constitutional protections of civil rights. The LCCR was in the vanguard of the movement to secure passage of the Civil Rights Act of 1964, including Title VI and Title VII, the Voting Rights Act of 1968, and the Fair Housing Act of 1968. Its numerous members have also supported the enactment and vigorous enforcement of Title IX of the Education Amendments of 1972. In addition, its members are dedicated to preserving the interest of individuals in raising issues of

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[1] Pursuant to Supreme Court Rule 37.3, all parties have filed with the Court their written consent to the filing of all *amicus curiae* briefs. Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* LCCR certifies that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than LCCR, their members, and their counsel has made a monetary contribution to the preparation and submission of this brief.

[2] The appendix to this brief is a list of LCCR member organizations.

unlawful discrimination and the interest of society in having those issues brought to light.

The LCCR strongly supports petitioner's position that the implied private cause of action for violations of Title IX necessarily encompasses redress for retaliation for complaints about unlawful sex discrimination. Based on its long experience in supporting and monitoring the enforcement of federal anti-discrimination mandates, the LCCR's unequivocal judgment is that a remedy for reprisal discrimination is indispensable to the efficient, effective enforcement of Title IX, and of federal anti-discrimination laws generally, as demonstrated in this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Correctly construed, the major federal statutory anti-discrimination provisions, including Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, prohibit retaliation for complaints about unlawful discrimination, either explicitly or implicitly. As a textual matter, a person is "subjected to discrimination" under Title IX (and any anti-discrimination statute) if he or she is punished based on a complaint about unlawful discrimination. As a practical matter, a statute intended to end unlawful discrimination must forbid related reprisals. Retaliation "deter[s] victims of discrimination from complaining," *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 346 (1997); restricts "access to statutory remedial mechanisms," *id.*; and "give[s] impetus to the perpetuation of [discrimination]," *Sullivan* v. *Little Hunting Park, Inc.*, 396 U.S. 229, 237 (1969). Because retaliation thoroughly and directly undermines the purpose and effect of an anti-discrimination law, such a law is fundamentally dependent upon a prohibition of reprisal discrimination. The former cannot be enforced without the latter.

These principles apply with full force to Title IX – just as they apply to Title VI of the Civil Rights Act of 1964, 42

U.S.C. § 2000d, and § 504 of the Rehabilitation Act, 29 U.S.C. § 794(a). Title IX was enacted to eliminate sex-based discrimination in the many federally-assisted education programs in this nation. Section 901(a) of Title IX broadly prohibits sex-based discrimination under any federally-assisted education program, and this Court has instructed that it must be "accord[ed] . . . a sweep as broad as its language." *North Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 521 (1982) (internal quotation marks omitted). The statutory prohibition of sex-based discrimination clearly encompasses related reprisal discrimination. No other interpretation of § 901(a) would be consistent with Title IX's "focus on the benefited class" and Title IX's acknowledged objectives – *viz.*, "to avoid the use of federal resources to support discriminatory practices" and to "provide individual citizens effective protection against those practices." *Cannon* v. *University of Chi.*, 441 U.S. 677, 704 (1979).

Indeed, this Court has defined sex-based discrimination under Title IX to include a school district's failure to respond adequately to known acts of sexual harassment by those within its control. See *Davis ex rel. LaShonda D.* v. *Monroe County Bd. of Educ.*, 526 U.S. 629, 643 (1999) ("whether viewed as 'discrimination' or 'subject[ing]' students to discrimination, Title IX '[u]nquestionably . . . placed on [the school district] the duty not' to permit [sex discrimination] in its schools, and recipients violate Title IX's plain terms when they remain deliberately indifferent to [sexual harassment]") (omission and first two alterations in original) (citation omitted) (quoting *Franklin* v. *Gwinnett County Pub. Schs.*, 503 U.S. 60, 75 (1992)). *A fortiori*, a school district or other federally-funded program discriminates when it *retaliates* against those who complain about discrimination. Under the current interpretation of Title IX, a federal-fund recipient is liable for sexual harassment only after it receives "notice" and fails to take advantage of "an opportunity to take action to end the harassment or to limit further harassment." *Gebser* v.

Lago Vista Indep. Sch. Dist., 524 U.S. 274, 289 (1998). Protection against reprisal discrimination is essential under Title IX and all civil rights statutes, but it is particularly necessary when some kind of notification is a precondition for liability. Reprisal discrimination is utterly inconsistent with such schemes because it discourages the action (*i.e.*, notification) that is a prerequisite to enforcement.

For these reasons, a cause of action under an anti-discrimination statute must include a private right of action based on retaliation. The most notable examples are found in the Reconstruction Statutes. In *Sullivan* v. *Little Hunting Park, Inc.*, 396 U.S. 229 (1969), this Court recognized that § 1982 must ban reprisal against individuals who challenge unlawful race-based discrimination in contracting, because any other interpretation would give "impetus to the perpetuation of racial [discrimination]" in direct contravention of the purpose of the statute. *Id.* at 237. Accordingly, all federal circuit courts to consider the question with respect to §§ 1981 and 1982 have found that "[t]he ability to seek enforcement and protection of one's right to be free of racial discrimination is an integral part of the right itself." *Goff* v. *Continental Oil Co.*, 678 F.2d 593, 598 (5th Cir. 1982); see *infra* at 18-20.

Critically, all federal circuit courts to address the issue have also concluded that the implied private rights of action arising under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, the Rehabilitation Act and, until this case, Title IX, include claims of reprisal discrimination. See, *e.g.*, *Peters* v. *Jenney*, 327 F.3d 307, 317-19 (4th Cir. 2003); *Neudecker* v. *Boisclair Corp.*, 351 F.3d 361, 363-64 (8th Cir. 2003) (per curiam); *Lowrey* v. *Texas A&M Univ. Sys.*, 117 F.3d 242, 254 & n.23 (5th Cir. 1997). Similarly, the express causes of action provided to federal employees under Title VII and the Age Discrimination in Employment Act, 29 U.S.C. § 621 – which do *not* include express provisions banning retaliation – have nonetheless been interpreted to

forbid reprisal discrimination. See *Porter* v. *Adams*, 639 F.2d 273 (5th Cir. 1981); *Forman* v. *Small*, 271 F.3d 285, 298 (D.C. Cir. 2001), *cert. denied*, 536 U.S. 958 (2002). This virtual unanimity reflects the indispensable relationship between prohibiting reprisals and preventing and remedying unlawful discrimination.

The numerous federal statutes containing express prohibitions of reprisal discrimination support, rather than detract from, this conclusion. In delineating the scope of an implied cause of action, this Court uses existing express causes of action addressing related conduct as a model. For example, in determining the scope of the implied cause of action under § 10(b) of the Securities Act of 1934, the Court declined to impose aider and abettor liability. Because "*none* of the express causes of action in the 1934 Act further imposes liability on one who aids or abets a violation," the Court inferred that Congress did not intend to impose such liability in implied causes of action. *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 179 (1994) (emphasis added); see also *Musick, Peeler & Garrett* v. *Employers Ins. of Wausau*, 508 U.S. 286, 297 (1993) ("consistency [with express causes of action] requires us to adopt a like contribution rule for the [implied] right of action"). Title IX was enacted in 1972; and at that time (and since), all major federal anti-discrimination statutes with express private causes of action forbade reprisal discrimination, either expressly or by implication. See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a); Fair Housing Act of 1968, *id.* § 3617; cf. also National Labor Relations Act, 29 U.S.C. § 158(a)(1); Fair Labor Standards Act, *id.* § 215(a)(3); *infra* at 22-24. This is strong evidence that Congress intended to forbid reprisal discrimination.

Any other interpretation of Title IX and its analogues would cause broad harm to the individuals whom these civil rights laws seek to protect. Clearly, if a person who participates in or is employed by a federally-funded program

is told that he or she has the right to be free of discrimination but is also told that any complaint about discrimination can be punished, that right has been eviscerated. Cf. *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 208 (1989) (Brennan, J., concurring in the judgment in part and dissenting in part) ("if an employer offers a black and white applicant for employment the same written contract, but then tells the black employee that her working conditions will be much worse than those of the white hired for that same job because 'there's a lot of harassment going on in this workplace and you have to agree to that,' it would have to be concluded that the white and black had not enjoyed an equal right to make a contract"), *superceded by statute*, 42 U.S.C. § 1981. Moreover, Title IX, Title VI and the Rehabilitation Act apply to participants in and employees of federally-funded education programs. Students and employees are not in relationships of equality with program administrators and employers; and, in such settings, protection against reprisal is particularly important.

As our Constitution recognizes in the First Amendment's protection of the rights of free expression and petition, the ability to exercise these rights unchilled by punishment is essential to the effective enforcement of all other rights. The anti-discrimination laws' prohibitions of reprisal discrimination, both implied and express, simply recognize this reality – that the right to be free of discrimination cannot be enforced without the right to be protected from retaliation for complaints – in an important statutory context. The unprecedented decision of the court below should be reversed.

ARGUMENT

I. TITLE IX FORBIDS REPRISAL DISCRIMINATION.

A, The Text and Purposes Of Title IX Demonstrate That It Bans Reprisal Discrimination.

Section 901(a) of Title IX provides that

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. [20 U.S.C. § 1681(a).]

Congress enacted Title IX to eliminate sex-based discrimination in federally-assisted education programs in the United States. In so doing, Congress employed a statutory structure modeled on Title VI of the Civil Rights Act of 1964, which seeks to eliminate race-based discrimination in federally-assisted programs. Phrased in the passive voice, the provision is not written "as a ban on discriminatory conduct by recipients of federal funds or as a prohibition against the disbursement of public funds to educational institutions engaged in discriminatory practices." *Cannon*, 441 U.S. at 692-93, Instead, like Title VI, Title IX "expressly identifies the class Congress intended to benefit" and makes that protection its "unmistakable focus." *Id.* at 690-91.[3] The statutory structure creates personal entitlements of the sort that may be enforced through a private judicial cause of

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[3] This rights-creating language is entirely distinct from the language used in the Family Educational Rights and Privacy Act of 1974 ("FERPA") which, the Supreme Court has held, does not create an implied private right of action for its enforcement. Indeed, this Court contrasted the generic prohibitory language of FERPA – denying funding to schools with a policy or practice of releasing students' records without parental consent – with Title IX whose text "is phrased in . . . explicit rights-creating terms." *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 284 (2002).

action, *id.* at 689-93, as Congress has legislatively confirmed. See *Franklin* v. *Gwinnett County Pub. Schs.*, 503 U.S. 60, 72 (1992) (agreeing that the amendments to Title IX "cannot be read except as a validation of *Cannon*'s holding").

Once Congress makes clear its intention to impose binding conditions on the receipt of federal funds, ordinary rules of statutory interpretation apply to determine the scope of those conditions and the means of their enforcement. This case addresses the scope of behavior that § 901(a) of Title IX proscribes, specifically whether retaliation against a person who complains about sex-based discrimination is itself discrimination. The parameters of the implied right of action are drawn to comport with the statutory text, structure and purposes. See *Musick, Peeler*, 508 U.S. at 294-97; *Guardians Ass'n* v. *Civil Serv. Comm'n*, 463 U.S. 582, 595 (1983) (opinion of White, J.) (scope of the implied cause of action is construed "to carry out the intent of Congress or to avoid frustrating the purposes of the statute involved"). Utilizing all of these resources, the Court "attempt[s] to infer 'how the [1972] Congress would have addressed the issue had the . . . action been included as an express provision in the' statute." *Central Bank of Denver N.A.*, 511 U.S. at 178.

The text of Title IX prohibits any person from being "subjected to discrimination" based on sex under a federally-funded education program. In defining the scope of Title IX, this Court has accorded Title IX "a sweep as broad as its language," generously construing Title IX to reach discriminatory practices not expressly excluded. *North Haven*, 456 U.S. at 521 (Title IX reaches discriminatory hiring under federally-funded education programs); *Davis*, 526 U.S. at 653 (Title IX reaches student-on-student sexual harassment). A person who complains about sex-based discrimination under a federally-funded education program and suffers adverse consequences that he or she would not otherwise have suffered has been "subjected to discrimination" based on sex within the meaning of Title IX.

In this setting, "discrimination" means different, less favorable treatment, and "on the basis of sex" means that the cause of the discriminatory treatment must be based on or rooted in sex differences or gender. Indeed, a retaliation claim under Title IX posits that the complainant was subjected to discrimination because he or she complained about sex-based inequalities. The concept of "discrimination on the basis of sex" is plainly broad enough to include discriminatory retaliation for complaining about sex-based differences in federally-funded education programs.

Critically, moreover, a narrow interpretation of discrimination to exclude reprisal discrimination is entirely inconsistent with the textual focus on the benefited class and would frustrate the statute's purpose of protecting that class. On numerous occasions, this Court has recognized that the victims of discrimination cannot be protected unless reprisal discrimination, too, is forbidden. This is particularly true where, as here, the victims of discrimination are employees of or participants in federally-funded programs who are not in relationships of equality with, respectively, the employer or administrator of those programs. (Indeed, under Title IX, participants are often elementary or secondary school students who plainly are even less able to identify and complain about discrimination than are their coaches and teachers.)[4] When

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[4] The court of appeals alternatively suggested that victims of sex-based discrimination who also suffer retaliation for complaining may have a cause of action for retaliation discrimination, while persons who complain about sex-based discrimination against others do not. Pet. App. 23a-24a. No such limit is suggested by the sweeping prohibition in the text, which requires only that the retaliation be "on the basis of sex," a prerequisite that is satisfied whether or not the complainant is also the victim of the initial act of discrimination. *See supra* at 8-9. And, as set forth *infra* at 18, this Court treated the white complainant in *Sullivan* as the victim of reprisal discrimination, though he complained about race discrimination against his black lessee. Finally, as noted in text, Congress's purposes of eliminating federal support for sex discrimination and protecting individuals from sex discrimination are undermined by the proposed

individuals know that challenging discriminatory conduct will result in detrimental treatment, the fear of retaliation "deter[s] victims of discrimination from complaining." *Robinson*, 519 U.S. at 346. Under such conditions, individuals who observe discrimination, who are expected to enforce or participate in discrimination, or who suffer discrimination have two choices: They can remain silent and accept discrimination or they can complain and accept punishment. For this reason, individuals must have unrestricted "access to statutory remedial mechanisms," if anti-discrimination statutes are to deter and remedy discrimination. *Id.* Cf. also *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960) ("effective enforcement [of federal labor laws] could thus only be expected if employees felt free to approach officials with their grievances"); *id.* ("[f]or it needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions") (citing *Holden* v. *Hardy*, 169 U.S. 366, 397 (1898)).

Put bluntly, if reprisal discrimination is not banned, enactment of an anti-discrimination statute will likely communicate that those who seek to enforce the statute will be punished and thus "give impetus to the perpetuation of [discrimination]." *Sullivan*, 396 U.S. at 237. As the Department of Justice has explained, "[a] right cannot exist in the absence of some credible and effective mechanism for its enforcement and enforcement cannot occur in the absence of a beneficiary class willing and able to assert the right." U.S. Dep't of Justice, *Title IX Legal Manual* 70 (Jan. 11, 2001), *available at* http://www.usdoj.gov/crt/cor/coord/ixlegal.pdf ("*Title IX Legal Manual*").

Interpreting "discrimination" to include reprisal discrimination is, moreover, the only interpretation of Title IX

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limitation. Particularly in elementary and secondary education, teachers and coaches are far better situated than students to identify and seek a remedy for sex discrimination.

that comports with its statutory purposes. Title IX was enacted, *inter alia*, "to avoid the use of federal resources to support discriminatory practices" and to "provide individual citizens effective protection against those practices." *Cannon*, 441 U.S. at 704. Thus, the private right of action must be consistent "with the statutory structure and purpose." *Gebser*, 524 U.S. at 284. Banning reprisal discrimination most effectively deters and remedies discrimination in federally-funded programs – indeed, protection against retaliation is necessary to vindicate the right to be free from discrimination.

First, and most obviously, prohibiting and punishing retaliation protects individuals by fostering early discovery and elimination of discriminatory policies and practices. Indeed, the Court has strongly induced persons subjected to sexual harassment to complain by holding that a cause of action for sexual harassment under Title IX will not lie "unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond." *Id.* at 290. Retaliation is always pernicious, but it is particularly so in this setting where retaliation effectively prevents complaints, undermining Title IX's deterrent purpose.

In addition, if the party whose decision-making is challenged as discriminatory may suppress complaints by terminating or punishing anyone who complains, that party has a much lower incentive to avoid discrimination. This, in turn, undermines the statute's purpose of ending federal funding of discriminatory practices. Effective deterrence requires the existence of a remedial mechanism that results in the imposition of liability on those with the power to discriminate or prevent discrimination. Retaliation constructively denies access to such a remedial mechanism, again undermining Title IX's deterrent purpose. Cf.

American Soc'y of Mech. Eng'rs, Inc. v. *Hydrolevel Corp.*, 456 U.S. 556, 572 (1982) ("the possibility of civil liability will inevitably be a powerful incentive for [an entity] to take those [preventive] steps"). Congress surely did not intend to create a federal right and a cause of action to enforce that right, and yet permit individuals to be punished for exercising those enforcement rights.[5]

B. Title IX's Prohibition Of "Discrimination" Has Received A Broad Interpretation.

In light of the foregoing, Title IX's prohibition of discrimination should be viewed as unambiguously banning retaliation discrimination. But if the statute is deemed ambiguous, the regulations implementing Title IX – which represent the interpretative judgment of the Department of Education ("DOE"), the agency "charged with responsibility for administering Title IX," *Cannon*, 441 U.S. at 706-08, and of the Department of Justice, the agency that "coordinate[s] the implementation and enforcement" of Title IX, see Exec.

[5] The opportunity to bring an administrative complaint alleging retaliation cannot appropriately protect enforcement of the right to be free from discrimination under Title IX and its analogues. As this Court recognized when construing Title IX in *Cannon*, the administrative enforcement mechanism will often fail to accomplish Congress's intention to provide individuals effective protection against discrimination. 441 U.S. at 704-06. Title IX's administrative complaint process (like the administrative complaint procedures for Title VI and the Rehabilitation Act) does not ensure that a complainant may activate and participate in the administrative process and does not guarantee any individualized relief for meritorious complaints. *Id.* at 706 n.41. In addition, in many circumstances, a shortage of administrative resources will result in a failure to act on individual complaints. *Id.* at 708 n.42. These concerns remain valid to this day. Reliance solely on an administrative enforcement mechanism for retaliation complaints is inconsistent with Congress's intent to provide individual citizens with effective protection against all aspects of discrimination; thus, the scope of the private right of action to enforce a statutory nondiscrimination mandate necessarily includes retaliation claims, to avoid fashioning the right in a way that is "at odds with the statutory structure and purpose." *Gebser*, 524 U.S. at 284.

Order No. 12,250, 45 Fed. Reg. 72,995, 72,997 (Nov. 2, 1980) – confirm § 901(a)'s prohibition of reprisal discrimination. See 34 C.F.R. § 100.7(e) (applied to Title IX under 34 C.F.R. § 106.71); *Title IX Legal Manual* at 70; U.S. Dep't of Justice, *Title VI Legal Manual* 65-66 (Jan. 11, 2001), *available at* http://www.usdoj.gov/crt/cor/coord/vimanual.pdf. The consistent views of the federal agencies that administer Title IX are entitled to substantial deference. See *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (regulations); *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624, 634 (1984); (executive order of agency charged with coordinating compliance).

If more reassurance were desired, it is noteworthy that, pursuant to the statute, Congress specifically reviewed the DOE's regulations, including the prohibition on reprisal discrimination, for consistency with congressional intent and left them undisturbed.[6] As a result of this review process *inter alia*, this Court has deferred to the interpretive judgments reflected in these regulations since their adoption in 1975. See *Grove City Coll.* v. *Bell*, 465 U.S. 555, 567-68 (1984) (according Title IX regulations particular deference as an interpretation of the statute), *superceded by statute on other grounds*, 20 U.S.C. § 1687; *id.* (Congress's failure to disapprove of the regulations "strongly implies that the

[6] *Alexander* v. *Sandoval*, 532 U.S. 275 (2001) is not relevant to the issue presented. In that case, the Court held that because Title VI prohibits only intentional discrimination, regulations that prohibit discriminatory effects went beyond the statutory prohibition and thus could not be privately enforced. *Id.* at 285-86. This case, in contrast, requires "constru[ction of] the statute itself," *id.* at 284 – *viz.*, whether Title IX forbids reprisal discrimination. The DOE regulations that ban reprisal discrimination do not exceed the statutory prohibition; they simply reflect the administering agency's authoritative construction of Title IX.

regulations accurately reflect congressional intent"); *North Haven*, 456 U.S. at 533 n.24.[7]

If resort to legislative history were required, it would similarly confirm petitioner's (and the relevant federal agencies') reading of the text and purposes of Title IX. Petitioner has described in detail the congressional hearings that preceded Title IX's enactment, illustrating that these hearings included substantial testimony about retaliation and its consequences. See Pet. 17-18 (citing and describing relevant hearings). The legislative history and the legal context of the legislation's enactment – the overwhelming body of federal anti-discrimination laws containing implied or express prohibitions of reprisal discrimination – confirm the congressional intent to prohibit punishment of those who seek to enforce Title IX's anti-discrimination mandate.

Finally, this Court's precedents entirely fail to support respondent's crabbed construction of the word "discrimination" in Title IX. In *Davis*, the Court held that Title IX's private cause of action authorized a mother's claim that a school district violated Title IX when its deliberate indifference "subjected" her daughter to sexual harassment by another student in a setting subject to the school district's control. 526 U.S. at 653-54. And, in *Gebser*, the Court held that Title IX authorizes a private cause of action based on a school district's deliberate indifference to a teacher's known sexual harassment of a student. 524 U.S. at 290. In each of these cases, the school district was deemed to have discriminated or to have subjected others to discrimination within the meaning of Title IX *not because it engaged in acts of sexual harassment, but because it failed to respond*

[7] In addition, Title IX was amended by the Civil Rights Restoration Act of 1987; nothing in the amendment process suggests any congressional sentiment that the DOE's regulations contravened its intent with respect to reprisal discrimination. To the contrary, the regulation comports with Congress's unwavering approach to federal anti-discrimination law. *See infra* Part II.

adequately to known acts of sexual harassment by those within its control. Title VI's prohibition of discrimination has received the same interpretation in cases addressing race-based harassment. See *Bryant* v. *Independent Sch. Dist. No. I-38*, 334 F.3d 928, 933 (10th Cir. 2003) ("when administrators who have a duty to provide a nondiscriminatory educational environment for their charges are made aware of egregious forms of intentional discrimination and make the intentional choice to sit by and do nothing, they can be liable under § 601").

A fortiori, a school district or other federally-funded program discriminates or subjects others to discrimination when it responds to sex-based discrimination by *retaliating* against those who bring discrimination to the proper authority's attention. Whether reprisal is characterized as discrimination or as subjecting a person to discrimination, a school district with a duty to prevent sex discrimination in its schools violates Title IX when it retaliates against a person who notifies it of such conduct. See *Davis*, 526 U.S. at 643 ("whether viewed as 'discrimination' or "subject[ing]' students to discrimination, Title IX '[u]nquestionably . . . placed on [the school district] the duty not' to permit [sex discrimination] in its schools, and recipients violate Title IX's plain terms when they remain deliberately indifferent to [sexual harassment]") (omission and first two alterations in original) (citation omitted) (quoting *Franklin*, 503 U.S. at 75)[8]; *Gebser*, 524 U.S. at 290 (holding that a cause of action

[8] In dissenting from the holding that Title IX's implied private cause of action includes student-on-student sexual harassment, Justice Kennedy cited the following factors: (i) that the misconduct is committed by a third party, (ii) that the school district does not authorize the misconduct, (iii) that the acts of students cannot reasonably be attributed to the school as the acts of its agents or otherwise, and (iv) that the school district's control of students is complex and limited. *Davis*, 526 U.S. at 658-68. None of these factors apply to reprisal discrimination which is, by definition, the intentional act of the school district. *See also id.* at 683 (Kennedy, J.,

for sexual harassment under Title IX arises when an official with "authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond").

The prohibition of reprisal discrimination is especially urgent in any setting where notice has been deemed a prerequisite to liability, and doubly urgent where the victims of discrimination are employees and students who are not in relationships of equality with the federally-funded program that discriminates and retaliates. How could a sensible statutory scheme allow a federally-funded program to retaliate against a participant or an employee for using a complaint process whose use is a prerequisite to that program's liability?

In light of the foregoing, respondent's contention that Title IX did not provide sufficient notice that it might be liable in damages for harm arising from reprisal discrimination is plainly wrong. This argument is based on this Court's Spending Clause jurisprudence, stating that a law enacted pursuant to the Spending Clause operates "in the nature of a contract," *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981), and that a federally-funded program accepts the terms of such a contract only if it is aware of the conditions imposed by Congress, *id.* at 17, 24-25. Cf. *Bennett* v. *Kentucky Dep't of Educ.*, 470 U.S. 656, 669 (1985) ("the program cannot be viewed in the same manner as a bilateral contract governing a discrete transaction"); *id.* at 665-66 (rejecting claim of insufficient notice where statute made clear that there are conditions on receipt of federal fund and noting that Congress is not required to "specifically identif[y] and proscrib[e]" each condition in the legislation).

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dissenting) ("a clear pattern of discriminatory enforcement of school rules could raise an inference that ~~the school~~ itself is discriminating").

As a matter of law, a federal-fund recipient who commits reprisal discrimination has notice that its conduct is forbidden. Respondent is not being held accountable or liable for discrimination committed by others; it is liable for its own discrimination. There is no "bar to liability where a funding recipient intentionally violates the statute." *Davis*, 526 U.S. at 642.[9] The text of Title IX provides more than sufficient notice that a federal-fund recipient may not use its authority in an education program receiving federal assistance to retaliate against those who complain about sex-based discrimination. Indeed, a "notice problem does not arise in a case such as this, in which intentional discrimination is alleged." *Franklin*, 503 U.S. at 74-75. See also *Davis*, 526 U.S. at 640. Thus, where, as here, the federally-funded program itself "causes" discrimination prohibited by Title IX, *Gebser*, 524 U.S. at 291, it cannot complain that Title IX did not provide adequate notice that its behavior was proscribed.

In sum, the statutory language, the context, and the purposes of Title IX clearly demonstrate that it prohibits reprisal discrimination. This meaning is confirmed by the uniform views of the administering federal agencies, the legislative history, and by this Court's construction of Title IX. "[M]eaning [is] imparted to [the words of the statute] by the mischief to be remedied." *Duparquet Huot & Moneuse Co.* v. *Evans*, 297 U.S. 216, 221 (1936). The "mischief to be remedied by Title IX" – as reflected in its text, history, and uniform construction and administration – cannot be

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[9] Precisely because it is intentional, the imposition of liability for reprisal discrimination on a federally-funded program is not remotely comparable to the imposition of direct liability for student-on-student sexual harassment or for the conduct of agents. *Cf. Davis*, 526 U.S. at 640-41 (rejecting direct liability for student-on-student sexual harassment); *Gebser*, 524 U.S. at 285-91 (rejecting the use of agency principles to impute school district liability for teacher misconduct and requiring deliberate indifference to known acts of harassment).

addressed unless Title IX's ban of discrimination includes reprisal discrimination.

II. PROTECTION FROM RETALIATION IS INTEGRAL TO FEDERAL ANTI-DISCRIMINATION LAW.

If traditional tools of statutory interpretation did not so clearly require an affirmative answer to the question presented, the Court would attempt to infer what the 1972 Congress that enacted Title IX would have done. See *Central Bank of Denver*, 511 U.S. at 178. In doing so, it is decisive that the major federal anti-discrimination statutes – including statutes with both implied and express private rights of action – prohibit reprisal discrimination. Indeed, the 1972 Congress knew that this Court had already established the fundamental principle that a right to be free of retaliation is inherent in the right to be free of discrimination. See *Cannon*, 441 U.S. at 696-98 (Congress is presumed to be aware of extant law).

A. Coverage of Reprisal Discrimination Is Uniformly Implied.

The Reconstruction Statutes, enacted more than a century before Title IX, reflect the Court's early recognition of the integral relationship between anti-discrimination law and a prohibition of retaliation for complaints. Decades ago, this Court held that 42 U.S.C. § 1982 – which forbids discrimination in connection with the sale or lease of property – created an implied private cause of action that includes claims based on reprisal discrimination. See *Sullivan* v. *Little Hunting Park*, 396 U.S. 229 (1969).

In that case, Sullivan, the white owner of property, leased a home to Freeman, an African-American; with that lease came a membership share in Little Hunting Park, a community park and playground facility for community residents. The Board of the Park refused to accept Sullivan's assignment of the lease to Freeman because Freeman was African-American and expelled Sullivan; Sullivan and Freeman sued. In finding

that Sullivan had a cause of action under § 1982, the Court explained,

> [i]f that sanction [expulsion for the advocacy of Freeman's cause], backed by a state court judgment, can be imposed, then Sullivan is punished for trying to vindicate the rights of minorities protected by § 1982. Such a sanction would give impetus to the perpetuation of racial restrictions on property. [*Id.* at 237.]

See also *Lytle* v. *Household Mfg., Inc.*, 494 U.S. 545 (1990) (holding that a § 1981 claim for retaliatory discharge should have gone to a jury).

All federal circuits addressing whether the implied causes of action arising under §§ 1981 and 1982 prohibit retaliation have uniformly held that they do. In *Goff* v. *Continental Oil Co.*, 678 F.2d 593 (5th Cir. 1982), the court explained that § 1981 would be "meaningless if an employer could fire an employee for attempting to enforce his rights under the statute," and therefore that the "ability to seek enforcement and protection of one's right to be free of racial discrimination" is "an integral part of the right itself." *Id.* at 598. To rule otherwise, the court said, would "sanction[] further discrimination against those persons willing to risk their employer's vengeance by filing suits." *Id.* See also *Setser* v. *Novack Inv. Co.*, 638 F.2d 1137, 1146 (8th Cir.) (recognizing cause of action for retaliation under § 1981 because "a retaliatory response by an employer against such an applicant who genuinely believed in the merits of his or her complaint would inherently be in the nature of a racial situation"), *modified en banc on other grounds*, 657 F.2d 962 (8th Cir. 1981); *Choudhury* v. *Polytechnic Inst.*, 735 F.2d 38, 43 (2d Cir. 1984) ("an employee who is punished for seeking administrative or judicial relief . . . has failed to secure that right to equal treatment which constitutes the fundamental promise of § 1981"); *Hawkins* v. *1115 Legal Serv. Care*, 163 F.3d 684, 692-93 (2d Cir. 1998); *London* v. *Coopers & Lybrand*, 644 F.2d 811, 819 (9th Cir. 1981); *Miller* v.

Fairchild Indus., Inc., 885 F.2d 498, 503-04 (9th Cir. (1989); *Winston* v. *Lear-Siegler, Inc.*, 558 F.2d 1266, 1268-71 (6th Cir. 1977); *Andrews* v. *Lakeshore Rehab. Hosp.*, 140 F.3d 1405, 1409-13 (11th Cir. 1998); *Fiedler* v. *Marumsco Christian School*, 631 F.2d 1144, 1149 n.7 (4th Cir. 1980) (§ 1981 affords "a remedy for both the initial expulsion and the retaliatory expulsions"); *Buckman* v. *Montgomery County* (*In re Montgomery County*), 215 F.3d 367 (3d Cir. 2000); *Skinner* v. *Total Petroleum, Inc.*, 859 F.2d 1439 (10th Cir. 1988) (per curiam).[10]

Finally, like the implied claims arising under the Reconstruction Statutes, the implied claims arising under Title VI, the Rehabilitation Act, and, until this case, Title IX have uniformly been interpreted by the federal courts of appeals to bar reprisal discrimination. In *Peters* v. *Jenney*, 327 F.3d 307 (4th Cir. 2003), the court of appeals held that Title VI creates an implied claim for race-based reprisal discrimination because "retaliation serves as a means of implementing or actually engaging in intentional discrimination by encouraging such discrimination and removing or punishing those who oppose it or refuse to engage in it," and thus bears "a symbiotic and inseparable relationship to intentional racial discrimination."[11] *Id.* at 317-19.

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[10] There was a brief period after *Patterson* v. *McLean Credit Union*, 491 U.S. 164 (1989), in which lower courts held that § 1981 did not forbid retaliation discrimination unless it related to the making and enforcement of contracts; that period ended with the Civil Rights Restoration Act of 1991, 42 U.S.C. § 1981. This period casts no doubt on the integral connection between anti-discrimination laws and a ban on related retaliation; it simply limited the scope of permitted retaliation claims to the scope of the anti-discrimination statute at that particular time.

[11] Even before Title IX was enacted, the Fifth Circuit suggested that Title VI – the model for Title IX, *see Cannon* 441 U.S. at 694-96 – forbade race-based retaliation in *United States* v. *Jefferson County Bd. of Educ.*, 372 F.2d 836, 888-90 & n.110 (5th Cir. 1966), *aff'd on reh'g en banc*, 380 F.2d 385, 392-93 (5th Cir. 1967) (per curiam). In that case, the court approved the government's decision that school districts could be held responsible for protecting from retaliation students who exercised their right to attend predominantly white schools under freedom of choice plans adopted pursuant to Title VI.

The Rehabilitation Act of 1973, 29 U.S.C. § 794, has also been interpreted to authorize an implied claim for reprisal discrimination. See *Neudecker* v. *Boisclair Corp.*, 351 F.3d 361, 363-64 (8th Cir. 2003); *Weixel* v. *Board of Educ.*, 287 F.3d 138, 148-49 (2d Cir. 2002); *Gribcheck* v. *Runyon*, 245 F.3d 547, 550 (6th Cir. 2001); cf. *Weber* v. *Cranston Sch. Comm.*, 212 F.3d 41, 49 (1st Cir. 2000) (holding that a parent has standing to challenge a school's retaliatory action for her complaint about the school's treatment of her disabled child).[12] It is no wonder, then, that until the instant case, it was recognized that a cause of action for retaliation under Title IX is necessary for "'the orderly enforcement of the statute.'" *Lowrey*, 117 F.3d at 254 n.23. See also *Frazier* v. *Fairhaven Sch. Comm.*, 276 F.3d 52, 67 (1st Cir. 2002); *Murray* v. *New York Univ. Coll. of Dentistry*, 57 F.3d 243, 251 (2d Cir. 1995); *Preston* v. *Virginia ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994).

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[12] Although the Rehabilitation Act does not provide an express private cause of action for retaliation, both the judicial interpretations of the Act and the text of the law itself reinforce the conclusion that protection against retaliation is a component of the statute's protection against disability discrimination. In 1992, the Rehabilitation Act was amended to clarify that:

> [t]he standards used to determine whether [the] section has been violated in a complaint alleging employment discrimination . . . shall be the standards applied under title I of the Americans With Disabilities Act of 1990, (42 U.S.C. 12111 et seq.) and the provisions of sections 501 to 504 and 510 of the Americans With Disabilities Act of 1990 (42 U.S.C. 12201 to 12204 and 12210), as such sections relate to employment.

29 U.S.C. § 794(d). The cited portions of the ADA include the ADA's prohibition of retaliation, 42 U.S.C. § 12203(a). Thus, the Rehabilitation Act now defines prohibited "discrimination" to include retaliation based on complaints of discrimination.

This Court and the federal courts of appeals have determined that an implied cause of action for discrimination necessarily includes a claim based on reprisal discrimination. That judgment with respect to the administration of federal anti-discrimination laws is entitled to great weight; and this consistent statutory interpretation should be applied to retaliation claims arising under Title IX.

B. Civil Rights Statutes Enforced By Express Causes of Action Uniformly Ban Reprisal Discrimination, Either Expressly Or By Implication.

Every major federal anti-discrimination statute that contains an express cause of action prohibits retaliation, including provisions enacted before and after Title IX. See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a); National Labor Relations Act, 29 U.S.C. § 158(a)(1); Fair Labor Standards Act of 1938, 29 U.S.C. § 215(a)(3); Americans with Disabilities Act, 42 U.S.C. § 12203(a), (b); Age Discrimination in Employment Act, 29 U.S.C. § 623(d); Family and Medical Leave Act, 29 U.S.C. § 2615(a); Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1140; Uniform Services Employment and Reemployment Rights Act, 38 U.S.C. § 4311(b); Occupational Safety and Health Act, 29 U.S.C. § 660(c)(1).[13]

Virtually all of these statutes include express prohibitions of reprisal discrimination, but not all. For example, the Title VII and ADEA provisions that ban unlawful discrimination in *federal* employment do not contain express prohibitions of

[13] Indeed, the language of major federal statutes makes clear that retaliation for complaints about discriminatory behavior is a type of discrimination. *See* 29 U.S.C. § 215(a)(3) (FLSA) (making it unlawful "to discharge or in any other manner discriminate against any employee" for filing a complaint); *id.* § 158(a)(4) (NLRA) (forbidding an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter").

retaliation. See 42 U.S.C. § 2000e-16; 29 U.S.C. § 633(a). A cause of action for retaliation against federal employees has nonetheless been inferred. Thus, with or without an express statement that reprisal discrimination is banned, the courts have interpreted federal anti-discrimination statutes with express causes of action to forbid retaliation. As the D.C. Circuit explained in the context of a federal employee's claim of age discrimination:

> Congress used unqualified language that encompasses a claim of retaliation because "analytically a reprisal for an age discrimination charge is an action in which age bias is a substantial factor." Congress's failure to mention "retaliation" explicitly does not undermine its intended breadth of the provision. It is difficult to imagine how a workplace could be "free from discrimination based on age" if, in response to an age discrimination claim, a federal employer could fire or take other action that was adverse to an employee. [*Forman*, 271 F.3d at 296-97 (citations omitted).]

See also, *e.g.*, *Porter* v. *Adams*, 639 F.2d 273, 277-78 (5th Cir. 1981) (Title VII's express cause of action for discrimination for federal employees includes retaliation); *White* v. *General Servs. Admin.*, 652 F.2d 913, 917 (9th Cir. 1981) (same); *Canino* v. *United States EEOC*, 707 F.2d 468, 472 (11th Cir. 1983) (same).[14]

This universal characteristic of anti-discrimination statutes with express private causes of action provides significant support to petitioner's interpretation of Title IX. Where, as

[14] Similarly, the text of the NLRA expressly bans employer retaliation against those who exercise their statutory rights, but does not expressly ban analogous union retaliation. This Court has nonetheless confirmed the National Labor Relations Board's determination that the NLRA forbids retaliation by *both* employers and unions. *See NLRB* v. *Industrial Union of Mar. & Shipbuilding Workers of Am., Local 22*, 391 U.S. 418 (1968).

here, the Court seeks to discover the intended scope of an implied cause of action, the Court examines the scope of related express causes of action and presumes that Congress intended an implied claim to have an analogous reach. For example, in *Central Bank of Denver*, the Court considered the bounds of an implied cause of action under § 10(b) of the Securities Act of 1934, specifically whether the implied cause of action included claims for aiding and abetting violators of § 10(b). The Court first observed that the federal securities laws create an "extensive scheme of civil liability," including express and implied rights of action as well as administrative enforcement proceedings. 511 U.S. at 171. The Court then "use[d] the express causes of action in the Securities Acts as the primary model for the § 10(b) action" because, had "Congress enacted a private § 10(b) right of action, it likely would have designed it in a manner similar to the other private rights of action in the securities Acts." *Id.* at 178 (citing *Musick, Peeler*, 508 U.S. at 294-97). "Following that analysis," the Court found it absolutely critical that "*none* of the express causes of action in the 1934 Act further imposes liability on one who aids or abets a violation," and inferred that Congress did not intend to impose such liability in implied causes of action. *Id.* at 179 (emphasis added). See also *Musick, Peeler*, 508 U.S. at 297 ("consistency [with express causes of action] requires us to adopt a like contribution rule for the [implied] right of action existing under Rule 10b-5").

Here, as we have shown, all major federal anti-discrimination statutes with express private causes of actions – including those most closely related to Title IX, such as Title VII – prohibit reprisal discrimination. Critically, the list includes several statutes that had already been enacted when Title IX was passed. And, Congress's practice since the enactment of Title IX reflects an unbroken recognition of the interwoven nature of anti-discrimination laws and the prohibition of reprisal discrimination. Once Congress has

delineated the scope of "comparable express causes of action," it would be "anomalous to impute to Congress an intention to [significantly restrict] the [scope] for a judicially implied cause of action." *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 736 (1975). Like all express federal causes of action banning discrimination, Title IX should be interpreted to ban reprisal discrimination.

* * * *

The statutory ban of reprisals is essential to protection of the underlying right to be free of discrimination, particularly where the victims are in inherently unequal relationships because the actors engaged in discrimination are adults, while the victims are minors, or are employers, while the victims are employees. Any contrary interpretation of Title IX and its analogues would cause broad harm to individuals whose rights to be free from unlawful discrimination are safeguarded by those federal civil rights laws. Indeed, our constitutional history and principles affirm that protection from retaliation for the exercise of fundamental federal rights is essential to the protection of the rights themselves. Congress's determination that federal anti-discrimination statutes, including Title IX, prohibit reprisal discrimination simply reflects a fundamental background principle of our constitutional system – that the rights of free speech and petition are "among the most precious of the liberties safeguarded by the Bill of Rights," *United Mine Workers of Am., Dist. 12* v. *Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967), because they ensure enforcement of all other rights.

Civil rights laws extend the guarantees of public citizenship to new groups and in new settings. Thus, Title IX extends the promise of equal citizenship, free from discrimination on the basis of sex, to all individuals participating in or employed by federally-funded educational activities and provides a private right of action for enforcement of this promise. Just as the Constitution recognizes that the right to petition for redress of grievances includes a right to do so without retaliation,

Congress has recognized that the right to be free of discrimination includes the right to complain about unlawful discrimination without reprisal discrimination.

CONCLUSION

The decision of the Eleventh Circuit should be reversed.

Respectfully submitted,

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APPENDIX

LCCR COALITION MEMBERS – JULY 2004

A. Philip Randolph Institute

American Association of People with Disabilities (AAPD)

AARP

ADA Watch

Affiliated Leadership League of and for the Blind of America

African Methodist Episcopal Church

African Methodist Episcopal Zion Church

Alaska Federation of Natives

Alaska Inter-Tribal Council

Alliance for Retired Americans

Alpha Kappa Alpha Sorority, Inc.

Alpha Phi Alpha Fraternity, Inc.

American Association for Affirmative Action

American Association of People with Disabilities

American Association of University Women

American Baptist Churches, U.S.A. – National Ministries

American Civil Liberties Union

American Council of the Blind

American Ethical Union

American Federation of Government Employees, AFL-CIO

American Federation of Labor – Congress of Industrial Organizations

American Federation of State, County & Municipal Employees, AFL-CIO

American Federation of Teachers, AFL-CIO

American Friends Service Committee

American Jewish Committee

American Jewish Congress

American Nurses Association

American Postal Workers Union, AFL-CIO

American Society for Public Administration

American Speech-Language-Hearing Association

American-Arab Anti-Discrimination Committee

Americans for Democratic Action

Anti-Defamation League of B'nai B'rith

Asian Pacific American Labor Alliance

Associated Actors and Artists of America – AFL-CIO

Association for Education and Rehabilitation of the Blind and Visually Impaired

Association of Junior Leagues International Inc.

Brennan Center for Justice at New York University School of Law

Building & Construction Trades Department – AFL-CIO

Catholic Charities, USA

Center for Community Change

Center for Women Policy Studies

Children's Defense Fund

Church of the Brethren – World Ministries Commission

Church Women United

Coalition of Black Trade Unionists

Common Cause

Communications Workers of America

Community Transportation Association of America

Congress of National Black Churches

Delta Sigma Theta Sorority, Inc.

Disability Rights Education and Defense Fund

Division of Homeland Ministries – Christian Church (Disciples of Christ)

Epilepsy Foundation of America

Episcopal Church – Public Affairs Office

Evangelical Lutheran Church in America

Families USA

Federally Employed Women

Feminist Majority

Friends Committee on National Legislation

GMP International Union

Global Rights

Hadassah, The Women's Zionist Organization of America

Hotel and Restaurant Employees and Bartenders International Union

Human Rights Campaign

Human Rights First

Improved Benevolent and Protective Order of Elks of the World

Industrial Union Department – AFL-CIO

International Association of Machinists and Aerospace Workers

International Association of Official Human Rights Agencies

International Brotherhood of Teamsters

International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO

International Union, UAW

Iota Phi Lambda Sorority, Inc.

Japanese American Citizens League

Jewish Community Centers Association

Jewish Council for Public Affairs

Jewish Labor Committee

Jewish Women International

Judge David L. Bazelon Center for Mental Health Law

Kappa Alpha Psi Fraternity, Incorporated

Labor Council for Latin American Advancement

Lawyers' Committee for Civil Rights Under Law

League of Women Voters of The United States

Mashantucket Pequot Tribal Nation

Mexican American Legal Defense & Educational Fund

Na' Amat – USA

NAACP

NAACP Legal Defense & Educational Fund

National Alliance of Postal & Federal Employees

National Asian Pacific American Legal Consortium

National Association for Equal Opportunity in Higher Education

National Association of Colored Womens Clubs, Inc.

National Association of Community Action Agencies

National Association of Community Health Centers

National Association of Human Rights Workers

National Association of Negro Business & Professional Women's Clubs, Inc.

National Association of Protection and Advocacy Systems

National Association of Social Workers

National Bar Association

National Black Caucus of State Legislators

National Catholic Conference for Interracial Justice

National Coalition on Black Civic Participation

National Coalition for the Homeless

National Committee on Pay Equity

National Conference of Black Mayors, Inc.

National Congress of Black Women, Inc.

National Congress for Community Economic Development

National Congress for Puerto Rican Rights

National Congress of American Indians

National Council of Catholic Women

National Council of Churches

National Council of Jewish Women

National Council of La Raza

National Council of Negro Women

National Council on Independent Living

National Education Association

National Employment Lawyers Association

National Fair Housing Alliance

National Farmers Union

National Federation of Business and Professional Women Clubs, Inc.

National Federation of Filipino American Association

National Gay and Lesbian Task Force

National Health Law Program

National Institute for Employment Equity

National Korean American Service and Education Consortium, Inc.

National Legal Aid & Defender Association

National Low Income Housing Coalition

National Neighbors

National Office for Black Catholics

National Organization for Women

National Partnership for Women and Families

National Post Office Mail Handlers, Watchmen, Messangers & Group Leaders

National Puerto Rican Coalition

National Sorority of Phi Delta Kappa, Inc.

National Urban League

National Women's Law Center

National Womens Political Caucus

Native American Rights Fund

Newspaper Guild

NOW Legal Defense and Education Fund

Omega Psi Phi Fraternity, Inc.

Open Society Policy Center

Organization of Chinese Americans

PACE International Union

Parents, Families, Frends of Lesbians and Gays (PFLAG)

People for the American Way

Phi Beta Sigma Fraternity, Inc.

Poverty & Race Research Action Council

Presbyterian Church (USA)

Pride At Work

Progressive National Baptist Convention

Project Equality, Inc.

Puerto Rican Legal Defense and Education Fund, Inc.

Religious Action Center of Reform Judaism

Retail Wholesale & Department Store Union, AFL-CIO

Service Employees International Union

Sigma Gamma Rho Sorority, Inc.

Sikh Mediawatch and Resource Task Force

Southeast Asia Resource Action Center

Southern Christian Leadership Conference

Southern Poverty Law Center

The Association of University Centers on Disabilities

The Justice Project

The Lawyers Committee for Human Rights

The National Conference for Community and Justice

The National PTA

U.S. Catholic Conference

Union for Reform Judaism

Unitarian Universalist Association

UNITE!

United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry

United Brotherhood of Carpenters and Joiners of America

United Church of Christ – Commission for Racial Justice Now

United Farm Workers of America, AFL-CIO

United Food and Commercial Workers International Union

United Methodist Church – General Board of Global

United Mine Workers of America

United Rubber, Cork, Linoleum & Plastic Workers of America

United States Students Association

United Steelworkers of America

United Synagogue of Conservative Judaism

Women's International League for Peace and Freedom

Women of Reform Judaism

Women's American ORT

Workers Defense League

Workmen's Circle

YWCA of the USA, National Board

Zeta Phi Beta Sorority, Incorporated